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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. STEVEN RAY ELDREDGE, Defendant and Appellant.	G045699 (Super. Ct. No. 01NF2256) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Vickie Lynn Hix, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Ava R. Stralla, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

We appointed counsel to represent Steven Ray Eldredge on appeal. Counsel filed a brief that set forth the facts of the case. Counsel did not argue against her client but advised the court no issues were found to argue on his behalf. Eldredge was given 30 days to file written argument on his own behalf. That period has passed, and no supplemental brief has been filed.

Pursuant to *Anders v. California* (1967) 386 U.S. 738, to assist the court in its independent review counsel suggested three issues: (1) whether the trial court had discretion to reduce the offense to a misdemeanor; (2) whether Eldredge met his burden to clearly show the court's decision to deny the Penal Code section 17, subdivision (b), motion was irrational or arbitrary; and (3) whether the appellate record supports a claim of ineffective assistance of counsel.

We have reviewed the information provided by counsel and have independently examined the record. We found no arguable issues. (*People v. Wende* (1979) 25 Cal.3d 436.) We affirm the judgment.

FACTS

On May 14, 2002, Eldredge pled guilty to corporal injury to cohabitant (Pen. Code, § 273.5, subd. (a)). Eldredge further admitted he had suffered two prison priors (Pen. Code, § 667.5, subd. (b)). Pertinent to this appeal, the trial court advised Eldredge, "At the end of five years, you could petition the court to have this charge reduced to a misdemeanor."

On December 26, 2007, Eldredge filed a notice of motion to reduce the charge from a felony to a misdemeanor pursuant to Penal Code section 17, subdivision (b). Counsel filed the same motion on January 8, 2008. Neither Eldredge nor his counsel appeared at the hearing set for the motion. The court denied the motion without prejudice. The court stated: "There is no [Penal Code section 17, subdivision (b)] agreement in the plea agreement for a reduction to a misdemeanor as reported by defense counsel. [¶] Further, the defendant has a significant criminal

history; [¶] The petition contained no information that a misdemeanor would be in the best interests of justice; [¶] Plus, the proof of service problem [Code of Civil Procedure] section 1013; [¶] The matter is denied without prejudice, and no appearance."

On June 17, 2011, Eldredge filed the same notice of motion and motion to reduce the charge from a felony to a misdemeanor pursuant to Penal Code section 17, subdivision (b). A transcript of the change of plea hearing was attached to the motion. On June 24, 2011, the prosecutor filed an objection stating, "This is a domestic violence offense which is priorable. The defendant also admitted [two] prison priors in this case. [¶] Given the defendant's history [and] the nature of the offense, the motion should be denied in the interests of public safety."

At a July 15, 2011, hearing, Eldredge did not appear. Attorney Marlin Stapleton, Jr., made a special appearance for retained attorney, John Dolan. Stapleton advised the trial court he was not "too familiar with the facts," and had not received the opposition papers. The court indicated a ruling on a motion pursuant to Penal Code section 17, subdivision (b), was discretionary with the court. The court further noted the case concerned a violent matter in that the victim sustained a broken nose, and cuts to her face, lip, and neck. The court observed that at the time of the plea, the sentencing judge indicated the defendant could return in five years and petition the court to reduce the crime to a misdemeanor; it was not part of the plea agreement. The court commented it must consider the crime, the defendant, the interest of society, and the seriousness of the crime. The court then denied the motion without prejudice. The court suggested that "next time, since the burden is on the defendant, that some letters of recommendation, and/or something that shows the defendant has turned to a life of a law-abiding citizen, would then help." Eldredge filed a timely notice of appeal.

DISCUSSION

We will address the possible issues suggested by appellate counsel seriatim.

Did the trial court have the discretion to reduce the offense to a misdemeanor?

In pertinent part, Penal Code section 17, subdivision (b), provides: "When a crime is punishable, in the discretion of the court, either by imprisonment in the state prison or imprisonment in a county jail under the provisions of subdivision (h) of [s]ection 1170, or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances: [¶] (1) After a judgment imposing a punishment other than imprisonment in the state prison or imprisonment in a county jail under the provisions of subdivision (h) of [s]ection 1170. [¶] . . . [¶] (3) When the court grants probation to a defendant without imposition of sentence and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor."

Penal Code section 273.5, subdivision (a), states, "Any person who willfully inflicts upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child, corporal injury resulting in a traumatic condition is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars ($6,000) or by both that fine and imprisonment."

After accepting Eldredge's guilty plea, the court suspended sentence and placed Eldredge on probation. Accordingly, the court had the discretion to reduce the matter to a misdemeanor upon Eldredge's application.

Did Eldredge establish the court's decision was irrational or arbitrary?

Trial courts have broad authority in ruling on a motion to reduce a conviction to a misdemeanor. (*People v. Hawkins* (2002) 98 Cal.App.4th 1428, 1457.) The California Supreme Court has held that in ruling on a motion to reduce a conviction

to a misdemeanor, the trial court should consider the nature and circumstances of the offense and the defendant's criminal history. (*People v. Superior Court* (*Alvarez*) (1997) 14 Cal.4th 968, 978 (*Alvarez*).) The decision whether to declare the offense a misdemeanor is within the court's discretion. (Pen. Code, § 17, subd. (b); *Alvarez, supra,* 14 Cal.4th at p. 977.) An appellate court will find the trial court abused its discretion only if appellant shows the decision was irrational or arbitrary. (*Alvarez, supra,* 14 Cal.4th at p. 977.) The record demonstrates the court considered the appropriate factors. We find no abuse of discretion in the court's decision.

Was Eldredge's right to effective assistance of counsel violated?

"In order to establish a violation of the right to effective assistance of counsel, a defendant must show that counsel's performance was inadequate when measured against the standard of a reasonably competent attorney, and that counsel's performance prejudiced defendant's case in such a manner that his representation 'so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.' [Citations.] Moreover, 'a court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies.' [Citation.] Prejudice is shown when there is a 'reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.' [Citations.] If defendant fails to show that he was prejudiced by counsel's performance, we may reject his ineffective assistance claim without determining whether counsel's performance was inadequate. [Citation.]" (*People v. Sanchez* (1995) 12 Cal.4th 1, 40-41, disapproved on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.)

Counsel, who appeared at the hearing, indicated he was not too familiar with the facts and had not seen the opposition papers. Yet, given the circumstances of the

offense and the reasoning of the court, it is not reasonably probable that had retained counsel appeared, the court would have granted Eldredge's motion.

DISPOSITION

The judgment is affirmed.

O'LEARY, P. J.

WE CONCUR:

BEDSWORTH, J.

ARONSON, J.